

Supreme Court, U. S.

FILED

FEB 3 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1976

No. **76-1315**

ROBERT CALHOUN JR., Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN et al.,
 Defendants-Appellees

JURISDICTIONAL STATEMENT

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420

Attorney for Appellant:

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Motion for Summary Judgement

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TABLE OF AUTHORITIES CITED

Boyce v. Grundy, 3 Pet 210, 7 L Ed. 655
Commonwealth Coatings Corp. v. Continental Casualty Co. 393 US 145, 89 S. Ct. 337, 21 L Ed. 2d. 301
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Nudd v. Brown, 91 US 426, 23 L Ed 286
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United States v. Johnson, 390 US 563, 88 S. Ct. 1231
United States v Price, 383 US 787, 86 S. Ct. 1152
United States v Throckmorton, 98 US 61, 25 L Ed 93

STATUTES

New York State Domestic Relations Law 307
United States Code, Title 18 sections 241 & 242
United States Code, Title 28 section 1254 (1)
Federal Rules of Civil Procedure, rules 1, 17, 56

RELATED CASES

71 Civ 2734 Alice M. Calhoun vs Riverside Research Institute and Columbia University
75 Civ 1565 Robert Calhoun Jr. vs The State of New York et al.
76 Civ 5770 Robert Calhoun Jr. vs United States of America.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1976

No. _____

ROBERT CALHOUN JR., Appellant,

vs

H. SPENCER KUPPERMAN, et al., Appellees.

On Appeal from the United States Court of Appeal
for the Second Circuit

JURISDICTIONAL STATEMENT

Appellant appeals from a final judgement of the United States Court of Appeal for the Second Circuit entered on December 3, 1976. This petition is brought pursuant to 28 USC 1254 (1).

Appellant further invokes Commonwealth Coatings Corp. vs Continental Casualty Co. 393 US 145, 89 S. Ct. 337, 21 L Ed. 2d. 301, and Gumbel vs Pitkin, 124 US 131, 8 S. Ct. 379, 31 L Ed. 374,. This plaintiff pleads for due process of law and some

simple justice.

OPINIONS BELOW

The judgement of the United States Court of Appeal for the Second Circuit is an affirmation of the "Opinion and Order #43384" rendered by District Court Judge Kevin T. Duffy on November 11, 1976.

JURISDICTION

The decision of the United States District Court granted a motion for dismissal of the complaint and mooted the motion for summary judgement. (appendix B) The United States Court of Appeal for the Second Circuit affirmed this judgement. (appendix A)

STATUTES INVOLVED

This case involves the Domestic Relations Laws of the State of New York, the Constitutional guarantees of the Fourteenth Amendment, the Civil Rights Act of 1964, 18 USC 241 and 242 and 42 USC 1983.

These statutes protects citizens from parties or organizations that would deny any one the enjoyment of exercising his rights and privileges that are

garanteed by the Fourteenth Amendment of the Constitution of the United States.

QUESTIONS PRESENTED

Does the appellant have standing to bring this lawsuit against the appellees for defrauding his wife of the benefits of a civil rights lawsuit?

Can a motion that contains fraudulent transcripts and false statements dismiss a complaint and moot a motion for summary judgement?

Does the courts infringe upon the rights of the appellant when it acts arbitrary and partial in favor of the appellees and against the appellant?

Can damages be assessed against the court's own personnel when they violate or infringe upon the rights of a party in a legal proceeding?

STATEMENT OF THE CASE

The appellant has charged the appellees with defrauding his wife, Alice M. Calhoun, of the benefits of her civil rights lawsuit. (71 Civ 2734)

The appellees have failed to deny these charges nor have they defended against these allegations.

The appellant charges the appellees with collusion, conspiracy, fraud and deceit, conspiracy to defraud a client, forgery, misrepresentation and unauthorized representation and making false statements to the court. These charges constitute malpractice and wanton and wilful misconduct on the part of the appellees yet they have failed to contest or deny these outrageous acts of misconduct.

The arguments offered by the appellees to these charges are : the appellant doesn't have standing to bring this action, the court lacks jurisdiction, the appellant fails to state a claim for which relief can be granted, and the law cited does not apply to the case at bar. None of these defenses address the allegations of the complaint nor do they vindicate or explain the actions of the appellees.

The appellant's motion to have the appellees held in default has gone unanswered by the court.

The appellees motion for dismissal of the complaint was brought on before Hon. Kevin T. Duffy on September 17, 1976 where all of the appellees did join in the motion put forth by Skadden, Arps, Slate, Meagher and Flom to dismiss the complaint because the matter had been settled on June 26, 1974 before Hon. Whitman Knapp. The Memorandum of Law in Support of the Motion to Dismiss the Complaint contained a transcript that is purported to be a direct cross examination of Alice M. Calhoun at the June 26, 1974 conference before Hon. Whitman Knapp.

The appellant pointed out to Hon. Kevin T. Duffy that the transcript is defective and fraudulent. Upon request from the court to see the settlement agreement, a Stipulation of Discontinuance was entered with the date of June 26, 1974 on its face with the signatures of the lawyers and one purported to be Judge Knapp's signature. The appellant upon reading and examining the Stipulation informed the court that it too was fraudulent.

The appellant entered a motion for summary judgement on September 18, 1975 in which he included a letter written by Richard M. Schafman to Michael H. Diamond that indicated the Stipulation of Discontinuance was not entered into the Court until July 1, 1974.

A motion by the appellant to have the appellees post security for the damages asked in this lawsuit was not acted upon.

On November 11, 1975, Hon. Kevin T. Duffy issued an "Opinion and Order #43384" that granted the motion for dismissal and mooted the motion for summary judgement. The appellees have failed to reply to the motion for summary judgement.

A timely notice of appeal was filed in the District Court on November 18, 1975. (appendix A) The appeal was argued orally on November 4, 1976 by the appellant without rebut from the appellees. H. Spencer Kupperman and Michael H. Diamond did appear pro se but offered no defense to the charges.

On December 3, 1976, judgement was entered affirming the "Opinion and Order #43384" issued by Honorable Kevin T. Duffy. The appellant offered a "Notice of Appeal" in the United States Court of Appeal for the Second Circuit on December 15, 1976 but the Appeal Notice was refused by the clerk in the Circuit Court and was advised by the Pro se Clerk that he had no appeal remedy to the judgement.

The appellant then traveled to the Supreme Court of the United States to inquire about his rights of appeal only to find out that his "Notice of Appeal" is proper and that misleading information had been given to him. Upon returning to the United States Court of Appeal for the Second Circuit on December 21, 1976, his "Notice of Appeal" was excepted without comment. (appendix A)

The appellant pleads for this Court's supervision and judgement because of the unaccounted for acts and unexplained irregularities that have occurred in adjudication.

STATEMENT OF THE FACTS

The appellees are charged with acts of collusion, conspiracy, fraud and deceit, and of defrauding a client of the benefits of a civil rights lawsuit. (complaint)

The appellees have failed to deny these charges nor, have they defended against the charges. (see motions for dismissal)

The plaintiff-appellant pointed out to Hon. Kevin T. Duffy on September 17, 1975 that the motion for dismissal entered by Skadden, Arps, Slate, Meagher and Flom, and joined in by all of the other defendant-appellees, was defective and fraudulent. When the Hon. Kevin T. Duffy asked for a copy of the settlement agreement, a " Stipulation of Discontinuance" was entered by the appellees instead and upon examination by the appellant was found to also be a fraudulent document. (see plaintiff's motion for summary judgement)

The appellant move to have the appellees judged for entering fraudulent evidence into the proceedings.

A motion for summary judgement was entered on September 18, 1975 requesting judgement be entered against the appellees for introducing fraudulent evidence into the proceedings. Rule 56 of the Federal Rules of Civil Procedure require that in a motion for summary judgement the defense must be specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgement, if appropriate, shall be entered against him.

The appellees have failed to give any response whatsoever to the motion for summary judgement.

The "Opinion and Order #43384 " denies the appellant the protection of rule 17 of the F.R.C.P.

The dismissal for lack of standing is contrary to rule 17 of the F.R.C.P. in that "... " No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest;..."

The fraudulent documents introduced into the proceedings by the appellees is cause for judgment to be rendered against them. According to Boyce vs Grundy, 3 Pet 210, "Fraud vitiates everything." 7 L Ed. 655. Also in Nudd vs Burrows, 91 US 426, "Fraud destroys the validity of everything into which it enters." 23 L Ed. 286. To further show that fraud destroys the validity of judgments as well in United States vs Throckmorton, 98 US 61, the court ruled "Fraud vitiates the most solemn contracts, documents and even judgments." 25 L Ed. 93. Further on in Boyce vs Grundy the court says, "The law abhors fraud and does not incline to permit it to purchase indulgence, dispensation or absolution." The "Opinion and Order # 43384" is contrary to all of these court rulings as well as the rules cited before them.

The appellant invokes Mangrelli vs Italian Line, 144 NYS 2d. 570, 280 Misc. 685, "Husband's cause of action for loss of wife's services and expenses result-

ing from personal injury, is separate and distinct from wife's cause of action for personal injuries. He must establish that the defendant was negligent and that his wife was not contributory to the negligence in order to succeed in his action." To deny the appellant the relief and protection set forth in Domestic Relations 307 and Mangrelli vs Italian Line infringes on his rights and privileges guaranteed by the Fourteenth Amendment.

The Courts in granting judgments in this instant case has strayed away from Commonwealth Coatings Corp. vs Continental Casualty Co. 393 US 145, 89 S. Ct. 337, "Any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even the appearance of bias." 21 L Ed. 2d. 301.

The courts should have applied Moore vs Crawford, 130 US 122, 9 S. Ct. 447, "Fraud in the sense of a court of equity includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed and injurious to or by which an undue or unconscientious advantage is taken

of another." 32 L Ed. 878

Since the appellees have failed to account for the acts or actions committed in the litigation of the case of 71 Civ 2734 Alice M. Calhoun vs Riverside Research Institute et al, this constitutes omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed and injurious to or by which an undue or unconscientious advantage is taken of another. This fraud is conspiratorial and criminal under 18 USC 241 because it interferes with a citizen's right or enjoyment of rights and privileges secured by the Constitution or laws of the United States.

JURISDICTION ON APPEAL

The appellant appeals pursuant to 28 USC 1254 (1) that provide jurisdiction in the Supreme Court of the United States from the final judgement of a United States Court of Appeal by writ of certiorari granted upon petition of any party to a civil case, after rendition of judgement.

The judgement rendered by the United States Court of Appeal failed to answer the " Questions Presented " by the appellant.

" 1. Is a motion to dismiss a complaint fraudulent if it contains fraudulent evidence and is based on that fraudulent evidence ?"

" 2. Can a judgement that is based on a motion containing fraudulent evidence as its basis moot a motion for summary judgement and grant a motion to dismiss a complaint ?"

" 3. Does the plaintiff have the right to cross examine the opposition in order that he may prove to the court that evidence offered in defense of a complaint is fraudulent ?"

" 4. When the court denies the plaintiff the opportunity to cross examine the opposition , is this a denial of due process of law and a violation of the constitutional rights of the plaintiff ?"

Since these questions are essential to the proper adjudication of this complaint, it is imperative

that the court give answers to such important issues. Since the Court of Appeal has failed to answer these vital questions then it becomes necessary and proper to seek this courts action on these questions.

The plaintiff invokes, United States vs Johnson, 390 US 563, 88 S. Ct. 1231, " The exclusive remedy provision of section 207(b) of the Civil Rights Act of 1964 (42 USC 2000a-6b) does not preempt every other mode of protecting a federal " right " or grant immunity from criminal prosecution to those persons who had long been subject to the criminal conspiracy provisions of the civil rights statute in 18 US 241. "

" The civil rights statute in 18 US 241 which penalizes a conspiracy to interfere with a citizen's right or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, encompasses all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States. (dissenting opinion) United States vs Johnson, 390 US 563, 88 S. Ct. 1231

In further support of United States vs Johnson, the appellant invokes United States vs Price, 383 US 787, 86 S. Ct. 1152, " Both 18 US 241, which makes a conspiracy to interfere with a citizen's free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States a federal offense, and 18 US 242 which makes it a federal offense wilfully to deprive any person, under color of law, of the same rights, include, presumably, all of the Constitution and laws of the United States.

The court has ruled in United States vs Guest, 383 US 745, 86 S. Ct. 1170, " The federal civil rights statute (18 US 241) which penalizes for conspiring to oppress or imtimidate a citizen in the free exercise or enjoyment of any right or privilege secured to him by the Federal Constitution encompasses rights secured by the equal protection clause as well as by the due process clause of the Fourteenth Amendment.

The fraud is in evidence in the court and the nature and presence of the fraud has been brought to

the attention of the court for its scrutiny and judgement. According to previous court rulings, fraud is abhorred in a court of equity is not permitted to purchase indulgence, dispensation or absolution.

CONCLUSION

The appellees have committed intrinsic fraud by introducing fraudulent conduct as setforth in Moore vs Crawford as well as the explicit fraud they committed by introducing fraudulent documents into this action.

The acts of the appellees have been concealed; the omissions of these acts of legal duty and trust along with the concealment of the facts of the litigation is a fraud in this instant case.

Since this fraud is being carried out by the appellees in concert in order to deny a citizen the rights granted to him by the Constitution of the United States, it is a conspiracy under 18 US 241 and a federal offense under 18 US 242 to wilfully deprive a person of his rights.

This appeal should be acted upon by this court in such a way as to grant relief and judgement to the appellant.

The appellant complains of the acts of the persons in the lower courts that tampered with the records in a way that favors the appellees. The decision to deny my motions are clerical decisions and the motions requesting that the appellees make admissions pursuant to rule 36 of the F. R. C. P. is missing from these proceedings. The clerical personnel did not enter it on the docket sheet in order that it will not be a part of the proceedings. These acts are criminal according to 18 US 241 and 242 in that they are wilful acts that deny a citizen the rights secured by the Constitution and laws of the United States.

Since the appellees have committed acts of fraud and deceit, conspiracy and collusion, conspiracy to defraud a client, misrepresentation and unauthorized representation, malpractice and wilful misconduct, without either a denial or a defense can there be any reasonable and fair judgement other than for the appellant? The appellant pleads for justice in a reasonable and impartial manner. Respectfully submitted,

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420

CONTENTS OF APPENDIX A

1. JUDGEMENT: Affirmation of the United States
Court of Appeal for the Second
Circuit.
2. ORDER: Denial of the motion for a Writ of Man-
damus.
3. NOTICE OF APPEAL: Appeal to the Supreme
Court of the United States.

UNITED STATES COURT OF APPEAL

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of November one thousand nine hundred and seventy-six.

Present: Honorable Leonard P. Moore

Honorable Wilfred Feinberg

Honorable Thomas J. Meskill

Circuit Judges

ROBERT CALHOUN JR.,
Plaintiff-Appellant
-against-

H. SPENCER KUPPERMAN, ESQ., et al.,
Defendants-Appellees

Appeal from the United States District Court
for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued

On Consideration Whereof, it is now hereby ordered, adjudged and decreed that the judgement of said District Court be and it hereby is affirmed on the opinion of Judge Duffy, dated November 1, 1975.

Judgement Entered
12-3-76

Leonard P. Moore

Wilfred Feinberg

Raymond Burghardt
Clerk

Thomas J. Meeskill
U. S. C. J.

A true copy

A. Daniel Irisare, Clerk

Second Circuit

At a Stated Term of the United States Court of Appeals,
in and for the Second Circuit, held at the United States Court
House, in the City of New York, on the twenty-fifth day of
March, one thousand nine hundred and seventy-six.

Robert Calhoun, Jr., Appellant,
v.

Hon. Kevin T. Duffy,
Appellee.

A motion having been made herein by Appellant
pro se for a writ of mandamus

Upon consideration thereof, it is

Ordered that said motion be and hereby is denied.

JLO WHT JEL

James L. Oaks

Wm. H. Timmons

UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

----- x
Robert Calhoun Jr., Plaintiff-Appellant,
-against- No. 75-7682
H. Spencer Kupperman, et al,
Defendants-Appellees. Notice of
-----x Appeal

NOTICE IS HEREBY GIVEN THAT, Robert Calhoun Jr., plaintiff-appellant named above, hereby appeals to the Supreme Court of the United States pursuant to 28 USC 1254 (2) from the final judgement of the United States Court of Appeal for the Second Circuit affirming the " Opinion and Order " of the District Court Judge Kevin T. Duffy, entered on December 3, 1976.

Date: December 13, 1976

Robert Calhoun Jr.
111-11 132 Street
Jamaica, New York 1142

Copies to:

H. Spencer Kupperman Esq.
Skadden, Arps, Slate, Meagher, & Flom
Freeman, Meade, Wasserman & Sharfman
Cravath, Swaine & Moore
Thacher, Proffitt, Prizer, Crawley & Wood

CONTENTS OF APPENDIX B

1. JUDGEMENT: Opinion and Order # 43384
2. MOTION: Motion for Summary Judgement
3. NOTICE OF APPEAL: Appeal to the United States Court of Appeal for the Second Circuit.

OPINION
AND
ORDER
#43384

ROBERT CALHOUN JR. ,
Pro se, Plaintiff
H. Spencer Kupperman,
Pro se, Defendant
CRAVATH, SWAINE & MOORE
Pro se, Defendants
Thacher, Proffitt, Prizer, Crawley & Wood
Pro se, Defendants
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Pro se, Defendants and for Defendants Michael H.
Diamond, Henry P. Baer, J. Phillip Adams, Peggy L.
Kerr
FREEMAN, MEADE, WASSERMAN & SHARFMAN
Pro se, Defendants

This is an action brought under 42 U.S.C. 1983, 18 U.S.C. 241 & 242, the Civil Rights Act of 1964 and the Fourteenth Amendment. Robert Calhoun Jr. the sole plaintiff in this action is the husband of Alice M. Calhoun. Mrs. Calhoun had previously brought an action against Riverside Research Institute (" Riverside ") and Columbia University(" Columbia ") allegeing discrimina-

tion based on race in the defendants' failure to promote her to the post of assistant manager of the "AMPAD Data Reduction Group " at its Electronics Research Laboratories. Calhoun v. Riverside Research Institute, 71 Civ 2734 (S. D. N. Y.). Defendants in the action before me are the attorneys and law firms who represented Mrs Calhoun, Riverside and Columbia at various stages of that litigation.

At some point in the earlier suit, Columbia was discontinued as a defendant. The claim against Riverside resulted in a disputed settlement agreement of \$3000. 00 to cover Mrs. Calhoun's out of pocket litigation expenses. Attorneys' fees were not included in this figure since counsel for Mrs. Calhoun had undertaken the case on a pro bono basis.

The disputed settlement was successfully challenged by Mrs. Calhoun at a hearing before Judge Knapp. The Judge expressed a willingness to act as a catalyst to bring the parties together on a new agreement:

MRS. CALHOUN: Your Honor Mr. Calhoun is criticizing me for negotiating a settlement.

THE COURT: Mr. Calhoun is not attacking anybody. Mr. Calhoun is expressing his wishes. My point is, Mr.

Calhoun, we are all here, we are all present, and why don't we try to settle it right now?

MR. CALHOUN: Right.

THE COURT: So let us not worry about who did what in the past.

Following a discussion off the record, a settlement figure of \$5,900 was agreed upon . The agreement was placed on the record:

THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

MRS: CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

MRS CALHOUN: Yes.

THE COURT: That is not taken care of by this settlement?

MRS. CALHOUN: I do.

Mr. Calhoun now alleges that the defendants conspired in the litigation to do harm to him and his wife by causing his wife to lose the damages that were warranted in her action. It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 US 420, 429 (1961); Evain v. Conlisk, 364 F. Supp. 1188 (N. D. Ill.), aff'd, 498 F. 2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.

Since plaintiff lacks standing , the complaint fails to state a claim upon which relief can be granted. The action ; therefore , must be dismissed as to all defendants. Plaintiff's motion for summary judgement and other relief are thus mooted.

SO ORDERED.

Kevin Thomas Duffy

Dated: New York, New York
November 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN JR., Plaintiff,
-against-
H. SPENCER KUPPERMAN, ESQ.,
Defendants.

Docket No.
75 Civ 3748
Notice of a
Motion for a
-x Summary
Judgement

Please take notice that the plaintiff motions for a summary judgement against the defendants for introducing fraudulent evidence into this action. Since neither prosecution nor defense can be maintained on fraudulent evidence, it is necessary that the Court give judgement now.

In a pre-trial conference before Honorable Judge Kevin T. Duffy, on September 17, 1975 at about 3:00 P. M., the plaintiff informed the Court that the transcript that was submitted in the "Memorandum of Law on Behalf of Defendant Skadden, Arps, Slate, Meagher & Flom in Support of Motion to dismiss the Complaint" was defective and does not represent what it is purported to represent. The plaintiff also called the Courts attention to the defect in the date on the "Stipulation of Discontinuance" that was entered at the conference. The plaintiff informed the Court that he had evidence to show that the signature date was in error. (see letter attach-

ed).

The plaintiff begs the Court to grant the relief prayed for in his complaint and ask the court to join all of the defendants in this judgement that joined Skadden, Arps, Slate, Meagher & Flom in this motion. (H. SPENCER KUPPERMAN, FREE-MAN, MEADE, WASSERMAN & SHARFMAN, : CRAVATH, SWAINE & MOORE;)

(Letter Attached)

Freeman, Meade, Wasserman & Sharfman
Attorneys and Counsellors at Law
551 Fifth Avenue
New York New York 10017
Telephone: 212-697-6464

July 2, 1974

Michael H. Diamond Esq.
Skadden, Arps, Slate Meagher & Flom
919 Third Avenue
New York, New York 10022

Alice M. Calhoun v. Riverside
Research Institute and Colum-
bia University

Dear Mr. Diamond:

I have received your letter of June 26, 1974.
Enclosed are my firm's check for \$5,900 payable to Alice M. Calhoun for her out-of-pocket expenses, not including any attorney's fees, and the stipulation discontinuing the above-entitled action with prejudice and without costs which was signed

by Judge Knapp and filed yesterday.

Very truly yours,

Richard M. Sharfman

Encs.
RMS:rs

Docket Sheet for 71 Civ 2734 Alice M. Calhoun vs
Riverside Research Institute et al. is in the records
and the Appendix that will follow this appeal.

NOTICE OF APPEAL TO A COURT
OF APPEAL FROM A JUDGEMENT
OR ORDER OF A DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	
ROBERT CALHOUN JR., Plaintiff,	Docket No.
-against-	75 Civ 3748
H. SPENCER KUPPERMAN ESQ. et al.,	
Defendants.	Notice of Ap-
-----x	peal

Notice is hereby given that, Robert Calhoun Jr.,
plaintiff above named, hereby appeals to the United
States Court of Appeals for the Second Circuit from
the order to dismiss the complaint and to moot the
motion for a summary judgement, entered on Novem-
ber 11, 1975.